## IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA ANDERSON/GREENWOOD DIVISION

Hugh Craig Lussardi, #252961, a/k/a Hugh Creighton Lussardi,	) Civil Action No.: 8:09-916-HFF-BHH )
Petitioner,	)
	REPORT AND RECOMMENDATION
VS.	OF MAGISTRATE JUDGE
Wardon Broad Bivor Correctional	
Warden, Broad River Correctional Institution,	)
Respondent.	

The petitioner brought this action seeking relief pursuant to Title 28, United States Code, Section 2254. On July 13, 2009, the respondent filed a motion for summary judgment. On July 14, 2009, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the petitioner was advised of the summary judgment procedure and the possible consequences if he failed to respond adequately. Despite this explanation, the petitioner did not respond to the motion.

As the petitioner is proceeding *pro se*, the court filed a second order on August 20, 2009, giving the petitioner through September 14, 2009, to file his response to the motion for summary judgment. The petitioner was specifically advised that if he failed to respond, this action would be dismissed for failure to prosecute. The petitioner not respond.

Based on the foregoing, it appears the petitioner no longer wishes to pursue this action. Accordingly, it is recommended that this action be dismissed *with prejudice* for lack of prosecution and for failure to comply with this Court's orders, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and the factors outlined in *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir.1982). *See Ballard v. Carlson*, 882 F.2d 93 (4th Cir.

1989).	
	s/Bruce H. Hendricks United States Magistrate Judge
September 22, 2009	
Greenville, South Carolina	